



CHEMTrust

Protecting humans and wildlife
from harmful chemicals

Briefing

Models of Cooperation with ECHA:

Potential future partnership arrangements between the UK and ECHA post-Brexit

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Introduction

This paper provides a summary of research conducted by CHEM Trust on the potential scenarios for EU-UK chemicals management cooperation post-Brexit.

The EU's main chemicals law, REACH (Registration, Evaluation, Authorisation and restriction of Chemicals), is administered by the European Chemicals Agency ECHA, based in Helsinki, Finland. One of the most important tools that ECHA has is a huge database containing information on the tens of thousands of industrial chemicals registered in REACH, and how they are used in millions of applications. This information is only available to those countries who are part of REACH – the EU and EEA countries.

This paper looks at the potential options for a post-Brexit UK to gain access to ECHA and to this crucial database of chemicals safety and use.

It provides: (i) a description of each model (ii) the legal basis on which an agreement can be made (iii) likely conditions for an agreement and (iv) existing precedents.

Who decides?

In most cases the decision is formally made by the ECHA Management Board, which includes representatives of each EU Member State and also the European Commission¹. This will mean, in practice, that the ECHA Management Board is only likely to approve a collaboration arrangement if the EU as a whole has approved it.

The options

1. The UK stays in EU REACH and ECHA

1.1. Description: Associate Membership of ECHA's Management Board and committees, Forum and several networks, as well as access to its database, but without voting rights. The Agency's REACH committees are: MSC (Member States Committee); RAC (Committee for Risk Assessment); SEAC (Committee for Socio-Economic Analysis). There is also a Biocidal Products Committee (BPC) for implementing EU regulations on biocides.

1.2. Legal Basis: international agreement which provides that the UK stays in REACH and keeps cooperating with ECHA (as an observer).

1.3. Conditions: (based on information we have obtained regarding EU-Swiss negotiations on Switzerland's participation in ECHA):

- The UK would need to follow all decisions on chemicals in REACH, without a vote on them, though the UK might have the opportunity to be involved in the discussions, and to

¹ <https://echa.europa.eu/about-us/who-we-are/management-board/management-board-members>

implement and follow a number of other chemical-related EU laws, such as those on factory pollution.

- Legal oversight and arbitration would be provided by the European Court of Justice (ECJ) or similar – such as the European Free Trade Area (Efta) court - on issues where there is a disagreement on interpretation of EU law, including when companies challenge the rationale for regulatory controls on their chemicals

1.4. Precedent: Norway, Iceland, Lichtenstein (on the basis of the EEA Treaty).

2. The UK has access to ECHA's database

2.1. Description: the information received by ECHA under REACH may be disclosed to the UK government or the UK chemicals agency, the Health and Safety Executive (HSE). This would provide access to ECHA's chemical safety database, without which CHEM Trust believes the HSE will be incapable of performing its key function as a chemicals regulator (in place of ECHA), i.e. to do new controls or restrictions on chemical use or to defend controls. It would also avoid the costs/burdens on UK companies of re-registering and providing safety data on chemicals already registered with ECHA.

2.2. Legal basis: Article 120 REACH.

2.3. Conditions:

- Untested, as this procedure has not yet been invoked.
- As a minimum, this option would require a separate international agreement signed by the EU and the UK under Article 112 paragraph 3 Treaty on the Functioning of the European Union (covering cooperation with third countries).

2.4. Precedent:

- None. During 2012, ECHA's Secretariat was due to explore the potential benefits of having agreements on the exchange of confidential business information. However, our information is that ECHA and the Commission then decided not to work further on this issue as there was no practical need for it.

3. The UK participates in the work of ECHA

3.1. Description: the UK participates in the work of ECHA's Committees and Forum. The applicant state can choose in which ECHA bodies it wants to participate, e.g. Croatia chose only RAC and SEAC, Switzerland cooperates on biocides. This option prevents divergence from the EU, maintains current levels of protection for the environment/human health and would enable regulatory consistency with the international standard, helping to facilitate trade.

3.2. Legal basis: Article 106 REACH.

3.3. Conditions:

- The MB makes a decision on a case-by-case basis on the extent to which the applicant country is aligning with the EU chemicals safety acquis (i.e. REACH and The Classification, Labelling and Packaging (CLP) Regulation), first consulting with the European Commission. ECHA and the Commission have generally been sympathetic to EU candidate countries, as they are aligning their own legislation with the EU acquis.
- However, several MB documents say that participation in the work of ECHA can be considered for any third country "irrespective of being on a path to EU accession or not", if they unilaterally align with REACH. This criterion, however, does not appear to have been applied in making a decision about Switzerland and biocides.

3.4. Precedents:

- Croatia: the participation of Croatia as an observer in ECHA's Committees was agreed by ECHA's Management Board (MB) [MB Sept 2011](#), ahead of its accession to the EU.

- Serbia: allowed to participate in the work of the Forum on REACH enforcement² by the [MB in December 2012](#). The decision was based on the fact that Serbia is a candidate country and had aligned its material chemicals safety legislation and institutional capacity with the EU acquis.
- Switzerland: allowed to participate in the work of ECHA on biocides (BPC) by the [MB in March 2015](#) on the basis of a Mutual Recognition Agreement (MRA)³, which has a specific chapter on Biocidal Products. It was, however, unsuccessful in its request to broaden this cooperation to industrial chemicals. ECHA and the Commission agreed to technical and scientific cooperation but ruled out participation in REACH and CLP work of ECHA on the basis this is limited to “countries that have aligned with REACH, i.e. EEA countries” ([MB December 2017](#)).

4. The UK cooperates with ECHA below the threshold of “participation”

4.1. Description: interaction with the ECHA Secretariat and participation in ECHA’s Networks (HelpNet⁴, Risk Communication Network⁵).

4.2. Legal basis: Operating Procedures of each entity.

4.4 Conditions:

- ECHA Secretariat: unknown conditions, as such a request has never been made.
- HelpNet: The decision is taken by the MB and needs prior approval of the HelpNet Steering Group which will make a case-by-case judgement on the basis of whether the third country is capable of maintaining its national REACH and CLP helpdesk.
- Risk Communication Network: third countries would need to share a justified need to partake in such communication.

4.4 Precedent:

- ECHA Secretariat: none.
- HelpNet: Croatia, Turkey, Serbia, Switzerland.
- Risk Communication Network: none.

5. The HSE becomes a peer agency of ECHA

5.1. Description: These agreements aim to strengthen collaboration on scientific and technical matters, via the exchange of information on specific projects, but do not provide direct access to ECHA’s work.

5.2. Legal basis: such a cooperation must be based on a form of international deal (Memorandum of Understanding, Statement of Intent) signed by ECHA and HSE. The ECHA is entitled to sign it, as it has legal personality (Article 100 REACH) and has the right to initiate contacts with stakeholder organisations (Article 108 REACH).

5.3. Conditions: The HSE would need to send a letter to ECHA requesting peer agency cooperation. ECHA must consult with the Commission before taking the decision.

5.4. Precedents:

- Canada, 21 April 2010, formalised through a [Memorandum of Understanding](#).

² The purpose of the Forum is to “coordinate a network of Member States authorities responsible for the enforcement of the REACH [as well as the CLP] Regulation” (Article 76(1)(f) REACH)

³ Mutual recognition agreement is an international agreement where 2 or more countries recognise each other’s conformity assessment results. Conformity assessment is the procedure in which a product, before it can be marketed, is tested, inspected and certified to ensure it complies with the relevant legislation. [European Commission on MRAs](#).

⁴ The HelpNet is a mutually helpful network initiated by the ECHA Secretariat to support national helpdesks, by harmonising answers in response to industry queries and for exchanging best practice at a technical level.

⁵ Risk Communication Network is an “informal, semi-active” network which seeks to communicate best practice to its members and observers from Accredited Stakeholder Organisations on risk communication related to REACH and CLP.

- US, 15 November 2010, formalised through a [Statement of Intent](#).
- Australia, 20 May 2011, formalised through a [Memorandum of Understanding](#).
- Japan, 15 June 2011, formalised through a [Statement of Intent](#).
- Switzerland, in 2017 (decision by [MB Dec 2017](#)) formalised through an [exchange of letters](#).

6. The UK is recipient of ECHA's international activities

6.1. Description: ECHA cooperates at a practical level with the UK, it gives presentations in the UK on REACH and ECHA's work.

6.2. Legal basis: It is the decision of ECHA on an ad hoc basis, which has the right to initiate contacts with stakeholder organisations (Articles 100 and 108 REACH).

6.3. Conditions: If it's of interest to ECHA and there's sufficient funding to cover costs.

6.3. Precedent

- Exchange of best practice and cooperation at practical level with China and India.
- Speeches at external events including in Russia, China, Ukraine.

Conclusions

Our analysis demonstrates that there is some flexibility in the possible ways in which the UK could collaborate with ECHA and potentially gain access to ECHA's database of chemicals safety and use.

In CHEM Trust's view the best option from both a chemical safety and financial point of view is for the UK to remain close to the EU's REACH system (see <https://chemtrust.org/brexit/>). The protection of human health and the environment will be better in this scenario, due to the greater information and expertise in the EU's system.

There would also be significant financial advantages to both the UK taxpayer and industry if the UK was able to use the REACH system, as this would avoid the need for duplication of REACH data and processes. It would also minimise the risk that some substances were not available in the UK due to companies not registering them in the UK system.

However, it is clear that there will be requirements if the UK wishes to have privileged access to REACH and ECHA, in particular around following the same high standards as the EU and that the ultimate authority on interpretation of EU law is the European Court of Justice, though it is quite possible that a Joint Committee of some sort could be the first line of arbitration.

- CHEM Trust is continuing to investigate these options; please contact our trade campaigner chloe.alexander@chemtrust.org if you are interested in this work

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